NOTICE
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2020 IL App (4th) 190713-U

NO. 4-19-0713

FILED
February 28, 2020
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re T.A., a Minor	)	Appeal from the
	)	Circuit Court of
(The People of the State of Illinois,	)	Champaign County
Petitioner-Appellee,	)	No. 19JA27
v.	)	
Theresa J.,	)	Honorable
Respondent-Appellant).	)	Brett N. Olmstead,
	)	Judge Presiding.

JUSTICE DeARMOND delivered the judgment of the court.
Justices Knecht and Holder White concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed, finding the trial court's decision to admit opinion testimony regarding respondent's intoxication was not an abuse of discretion, and the trial court's decision finding the minor was placed in an injurious environment was not against the manifest weight of the evidence.

¶ 2 In June 2019, the State filed a petition for adjudication of neglect with respect to T.A., who was six years old at the time of the incident and the minor child of respondent, Theresa J. The putative father did not participate in the trial court proceedings and is not relevant to this appeal. In June 2019, at the shelter-care hearing, respondent stipulated to both counts of the petition, and the trial court made the minor a ward of the court, placing temporary custody with the Illinois Department of Children and Family Services (DCFS).

¶ 3 In August 2019, after an adjudicatory hearing, the trial court found the State failed to prove count I, but found it proved count II, in that respondent placed the minor in an injurious environment due to exposing him to substance abuse (705 ILCS 405/2-3(1)(b) (West 2018)).

¶ 4 On appeal, respondent argues the trial court erred in allowing opinion testimony about respondent's intoxication and finding that T.A. was neglected. We affirm.

¶ 5 I. BACKGROUND

¶ 6 In June 2019, the State filed a petition for adjudication of neglect, alleging T.A, born August 20, 2012, was abused and neglected pursuant to section 2-3(1)(b) and section 2-3(2)(i) of the Juvenile Court Act of 1987 (705 ILCS 405/2-3(1)(b), 2-3(2)(i) (West 2018)), alleging in count I respondent inflicted upon the minor physical injury by other than accidental means, causing impairment of physical or emotional health, and in count II, placed the minor in an injurious environment due to exposing him to substance abuse. In June 2019, respondent stipulated to both counts of the petition and an adjudicatory hearing was set for August 2019.

¶ 7 A. Adjudicatory Hearing

¶ 8 1. *Cassandra Johnson*

¶ 9 Respondent did not attend the adjudicatory hearing. Cassandra Johnson testified she knew respondent for most of her life and is friends with her. On the evening of June 9, 2019, respondent, respondent's mother, and T.A. came over to Johnson's house. Johnson was cooking and respondent was drinking. T.A. became upset when he could not enter the correct passcode to unlock respondent's phone, and respondent started yelling at T.A. She then grabbed T.A. by his neck and pulled his hair. When asked to describe what she saw, Johnson said respondent "basically had one hand on his head and the hand on his neck choking and yanking." Johnson testified respondent was being very aggressive toward T.A. because respondent was "mainly high and drunk." This drew an objection from defense counsel for lack of foundation. The court stated, "The objection is overruled at this point, but the foundation would have to be laid, so I'll let the answer stand." Johnson testified she intervened on T.A.'s behalf and told respondent to

"stop putting her hands on her baby" because she was concerned for the child's welfare at that point. When she talked to T.A. about what happened, he said his mother pulled and choked him. Johnson testified respondent was at her house for approximately two and a half hours and during that time she said respondent "drunk a lot." Johnson confirmed respondent was drinking both hard liquor (Hennessy) and beer while at her house. Johnson also stated that earlier in the day, before respondent came to her house, Johnson was at respondent's mother's house where respondent was "drinking and getting high." At respondent's mother's house, Johnson saw respondent use "Mollies" which she described as a "blue pill that has you feeling high." Later that evening, they all went to Johnson's father's house at 2605 E. High Street in Urbana, and Johnson described the incident which ultimately led to her calling the police. According to Johnson, T.A. was crying and respondent "got irritated with him again and she was trying to go after him 'cause I guess she was saying that the baby was—kept irritating her and she's tired of him cyring." When T.A. would not come to respondent, Johnson described how respondent chased him around a car and "she had the beer bottle trying to hit him." Johnson testified respondent eventually threw the bottle of beer at him, "trying to hit the baby." Instead, the bottle bounced near her sister's leg, but respondent was still "screaming and hollering because the baby wouldn't come toward her." Johnson said both she and her sister had been trying to protect the child, and when respondent threw the beer bottle, he was hiding behind Johnson's sister. Eventually the police arrived, and she told the officer what had taken place.

¶ 10 2. *Madison Parada*

¶ 11 Madison Parada is a child protection specialist with DCFS and was assigned to the investigation of T.A. and respondent. All parties signed a stipulation regarding her testimony due to Parada's inability to be at the hearing. Her stipulated testimony included her conversation

with T.A. in June 2019. T.A. told her that respondent was yelling at him the previous night and threw a bottle at him. He said the bottle was coming toward his face, before he was able to move out of the way. Other people were present at the incident who "kept him safe." Parada also interviewed respondent, who was incarcerated in the Champaign County jail at the time. Respondent told Parada T.A. was not listening so she got frustrated and said things out of anger, including threatening to kill T.A. She said T.A. has behavior problems and she has to be the "bad person" when he misbehaves and normally engages in corporal punishment like spanking T.A. as a form of discipline. She said she was drinking when the incident occurred but denied any drug use. She fought for three years to get T.A. back, but now she "cannot do it anymore" and wanted to "sign over her rights." She told Parada she would refuse to attend any classes DCFS offered and blamed "the system" for failing T.A.

¶ 12 Parada's stipulations also encompassed respondent's history with DCFS, including 10 unfounded reports between August 2005 and December 2017, and 4 indicated reports concerning children other than T.A. The indicated reports ranged from inadequate clothing and supervision of the minors to bruises, cuts, welts, abrasions, and oral injuries to the children. In January 2016, respondent was indicated for inadequate supervision of T.A. and in February 2019, for substantial risk of physical injury and placing the minor in an environment injurious to T.A.'s health and welfare. Respondent also had two previous abuse and neglect cases in Champaign County. One of the previous cases terminated her parental rights involving her older children. The other involved T.A. Respondent was ultimately restored to fitness, and custody and guardianship of T.A. was returned to her in 2015.

¶ 13 3. *Deron Brize*

¶ 14 The State then introduced evidence via a stipulated police report authored by Deron Brize, who was with the Champaign County Sheriff's Office and responded to Johnson's father's home at 2605 E. High Street in Urbana the night of the incident. By agreement of all parties, the court considered Brize's observations contained in the report as well as his interview with T.A. and respondent. Upon arrival, Brize could hear several adults yelling and a child crying. Other deputies arrived to control the scene and Brize first interviewed T.A. T.A. said he was in trouble earlier in the day with respondent and respondent "hit him, pulled his hair and choked him." Outside the address on High Street, T.A. said he had forgotten to remain in the car and respondent became very upset. Respondent started to curse at him, he refused to go near her, and he started to run away because he was scared. He said respondent chased after him and said that she was going to kill him. Brize observed no injuries on the minor. Brize then interviewed respondent. Respondent said she had been drinking all day, she never hit T.A., but she did try to discipline him. She said she never choked T.A. but did grab him by the shoulder at Johnson's house in order to get his attention. She admitted threatening to kill T.A. out of anger and admitted throwing a beer bottle out of anger, but not at T.A. After her arrest, she stated she no longer wanted to be a parent to T.A.

¶ 15 The trial court found the State failed to prove an injury by a preponderance of the evidence, and therefore found the State failed to prove count I in the petition. In discussing count II, the court noted the testimony centered around one incident, but that there was no requirement the State necessarily show a pattern of behavior. Based on Johnson's description of respondent's behavior, the court characterized her as being "out of control" because, as Johnson testified, respondent was "drunk and high." The court related Johnson not only observed respondent drink, but observed her drink a lot at multiple locations before the incident. She observed respondent

take a blue pill she described as a "Molly," a "substance designed to cause a high," and respondent's actions as described by Johnson were "consistent with somebody who is under the influence of something." The court also found there was a sufficient foundation for Johnson's opinion respondent was intoxicated based, in part, on the "outrageous behavior by [respondent] toward her young son." As the court described it, respondent's intoxication fueled her frustration with T.A., causing her to interact with him in a "completely inappropriate manner, a violent manner, a dangerous manner." The court further found that by throwing the bottle at or in the direction of the minor, respondent placed him in danger, "creating [*sic*] harmful environment for him." Further, respondent admitted drinking to the DCFS investigator, Parada, and admitted "drinking all day" to Deputy Brize. She also expressed her frustration with T.A.'s behavioral problems and admitted she had to be the "bad person." The court found her attempts to control that, fueled by alcohol, had made it dangerous for T.A. and found the State had proved by a preponderance of the evidence T.A. was neglected as alleged in count II of the petition. The matter was then set for a dispositional hearing.

¶ 16 B. Dispositional Hearing

¶ 17 Respondent failed to appear for the dispositional hearing in September 2019. It was noted in the dispositional report prepared by Lutheran Social Services of Illinois (LSSI) the caseworker had attempted to contact respondent to set up supervised visits between respondent and T.A.; however, respondent lived in Chicago, and her address was unknown. The caseworker was eventually able to contact respondent and sought to schedule a supervised visit to coincide with T.A.'s birthday. Respondent replied, "[i]f my visits have to be supervised then I do not want any visits." Since that time, respondent had no further contact with LSSI and an assessment for the trial court's review had to be completed without her participation.

¶ 18 Katrina Kindle, a supervisor from LSSI who was also serving as the caseworker in this case, testified T.A had recently been moved to the youth unit at Lincoln Prairie Behavioral Health Center (Lincoln Prairie) in Springfield on an emergency basis due to "suicidal and homicidal ideation" as the result of biting a teacher at school and trying to swallow two checker pieces. She stated the health center diagnosed T.A. with disruptive mood dysregulation disorder and attention deficit hyperactivity disorder. Lincoln Prairie was planning on meeting with the psychiatrist to determine what psychotropic medications could be approved. While there, T.A. could have visits from his caseworker or foster mother. Although respondent had contacted the facility a number of times for information, Kindle requested no information be provided to respondent at this time.

¶ 19 After the recommendations of counsel, the court indicated it had reviewed the dispositional report, heard all the evidence, and considered all the statutory factors and concluded there was no parent in a position to safely care for T.A. The court noted the multiple and complex diagnoses listed in the report and found respondent did not have the ability to parent him due to her "substance abuse and emotional dysregulation." The court noted respondent's long history with DCFS involvement and found respondent was not capable of safely caring for T.A.—and apparently did not want to, at least not in accordance with DCFS recommendations—as she refused to engage in any visits with T.A. if they were supervised. The court found no parent to be fit, able, or willing to care for T.A. and that it was in his best interests that custody and guardianship be removed from respondent and placed with DCFS.

¶ 20 This appeal followed.

¶ 21 II. ANALYSIS

¶ 22 Respondent argues the trial court erred by admitting Johnson's nonexpert opinion testimony about respondent's intoxication at the adjudicatory hearing and erred by finding that T.A. was neglected due to exposure to substance abuse. We disagree.

¶ 23 At a proceeding on adjudication of wardship, the burden is on the State to prove the allegations of neglect by a preponderance of the evidence. *In re Arthur H.*, 212 Ill. 2d 441, 463-64, 819 N.E.2d 734, 747 (2004). Although "neglect" has no strictly delineated meaning, it is generally defined as the " ' "failure to exercise the care that circumstances justly demand." ' " *Arthur H.*, 212 Ill. 2d at 463 (quoting *In re N.B.*, 191 Ill. 2d 338, 346, 730 N.E.2d 1086, 1090 (2000), quoting *People ex rel. Wallace v. Labrenz*, 411 Ill. 618, 624, 104 N.E.2d 769, 773 (1952)). Cases involving allegations of neglect are *sui generis*, taking into consideration the totality of the facts and circumstances presented in the record. *Arthur H.*, 212 Ill. 2d at 463. Neglect can be intentional or unintentional. *N.B.*, 191 Ill. 2d at 346. Children are neglected if their environment is injurious to their welfare. 705 ILCS 405/2-3(1)(b) (West 2018). Although "injurious environment" is an amorphous concept and dependent upon the facts of each case, it is based on the premise "[p]arents have the duty to protect their children from harm, and their refusal to provide their children with safe and nurturing shelter *** [constitutes] neglect." *In re M.K.*, 271 Ill. App. 3d 820, 826, 649 N.E.2d 74, 79 (1995). On review of a trial court's finding of neglect, the court's ruling will "not be reversed unless it is against the manifest weight of the evidence." *Arthur H.*, 212 Ill. 2d at 464.

¶ 24 A. Nonexpert Opinion

¶ 25 During the adjudicatory hearing, Johnson testified respondent grabbed T.A.'s neck and pulled his hair when respondent "was mainly high and drunk." This drew a foundation objection from defense counsel. The trial court overruled the objection but indicated the

foundation for the statement had to be laid. Then, the following dialogue took place between the State and witness Johnson:

> "Q. How long had you been with [respondent] that day?
>
> A. We hung at my house for a good two hours and a half.
>
> Q. And during that time, did you see [respondent] drink alcohol?
>
> A. Yes.
>
> Q. And do you know about how much you saw her drink?
>
> A. She drunk a lot.
>
> Q. What kind of alcohol was she drinking?
>
> A. Like Hennessy (hard liquor), beer.
>
> Q. Do you know if she had been drinking prior to coming to your house?
>
> A. Yes, because before, me and my mom was hanging at [respondent's] mother's house before we came to my house.
>
> Q. Okay. So you were with—you were with her at a different location before *** she came to your house?
>
> A. Yes. She was drinking and getting high.
>
> Q. And was [respondent] drinking at her mother's house as well?
>
> A. Yes, she was."

¶ 26 Johnson then testified she first saw respondent at approximately 3 p.m., and the incident with T.A. occurred at approximately 5 p.m. or 6 p.m. She also testified while at respondent's mother's house she saw respondent take "Mollies," which she described as a "blue pill that has you feeling high."

¶ 27 Through this line of questioning, the State was able to elicit testimony from witness Johnson that she had been with respondent for more than three hours, saw respondent drink a lot of alcohol, saw her drink alcohol at respondent's mother's house and Johnson's house, and saw her take a "blue pill that has you feeling high." While Johnson did not offer testimony on any physical characteristics of respondent concerning her intoxication level, her personal observations as outlined above are more than sufficient to establish the necessary foundation for her opinion.

¶ 28 "If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally based on the perception of the witness, and (b) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue, and (c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702." Ill. R. Evid. 701 (eff. Jan. 1, 2011).

¶ 29 Some opinions of lay witnesses regarding the witness' observations are admissible. A witness who is qualified by personal observation is allowed to state their opinion on another's level of intoxication. *Weaver v. Lovell*, 128 Ill. App. 2d 338, 345, 262 N.E.2d 113, 116 (1970). Illinois courts have long held even a layperson is allowed to testify regarding observations of alcohol intoxication because these observations are within the normal experience of competent adults. See *People v. Jacquith*, 129 Ill. App. 3d 107, 113, 472 N.E.2d 107, 111 (1984); *People v. Bobczyk*, 343 Ill. App. 504, 510, 99 N.E.2d 567, 570 (1951); *People v. Vanzandt*, 287 Ill. App. 3d 836, 845, 679 N.E.2d 130, 136 (1997); *People v. Workman*, 312 Ill. App. 3d 305, 310, 726 N.E.2d 759, 762-63 (2000); *People v. Williams*, 384 Ill. App. 3d 327, 335, 892 N.E.2d 620, 628 (2008). "Competency to render an opinion on the intoxication of another depends on the *observations and experience* of the witness." (Emphasis added.) *Tate v. Coonce*,

97 Ill. App. 3d 145, 150, 421 N.E.2d 1385, 1389 (1981). "[I]t is within the discretion of the trial court as to what constitutes a sufficient basis for a nonexpert to render an opinion on intoxication." *Coonce*, 97 Ill. App. 3d at 150. The admission of evidence is within the sound discretion of the trial court, and a reviewing court will not reverse a trial court's ruling on the admission of evidence absence an abuse of discretion. *People v Becker*, 239 Ill. 2d 215, 234, 940 N.E.2d 1131, 1142 (2010). A trial court abuses its discretion when the court's ruling is "arbitrary, fanciful or unreasonable or where no reasonable man would take the view adopted by the trial court. [Citation.]" (Internal quotation marks omitted.) *People v. Illgen*, 145 Ill. 2d 353, 364, 583 N.E.2d 515, 519 (1991).

¶ 30 "[W]itnesses qualified by personal observations may state their opinion on [another's level of] intoxication." *Weaver*, 128 Ill. App. 2d at 345. Coupled with respondent's admission to the DCFS caseworker and deputy sheriff to drinking or "drinking all day," there is no basis to conclude the trial court's decision to admit Johnson's lay opinion of respondent's intoxication was arbitrary, fanciful, or unreasonable. See *Illgen*, 145 Ill. 2d at 364. Accordingly, the trial court did not abuse its discretion in allowing the State to present such evidence through Johnson's testimony.

¶ 31 B. Manifest Weight of the Evidence

¶ 32 Count II of the petition alleged T.A.'s environment was injurious to his welfare while residing with respondent because the environment exposed him to substance abuse (705 ILCS 405/2-3(1)(b) (West 2018)). The evidence presented to the trial court at the adjudicatory hearing has been set forth in detail above and need not be repeated here except where necessary to the analysis. Based on the testimony, the court was able to find respondent was, for a variety of reasons, unable to control her behavior toward T.A., primarily because of the frustration and

anger she felt about his various behavioral issues, especially when she was intoxicated. She admitted drinking all day and Johnson testified to her observations of respondent drinking over at least a two-and-a-half hour period where she consumed "a lot" of hard liquor and beer combined with some form of controlled substance in a blue pill Johnson described as a "Molly." During this time, her then seven-year-old child, who suffers from a multitude of emotional and behavioral issues, was upset because he could not continue playing a game on her phone because he was locked out. When he exhibited his frustration, respondent began yelling and screaming at him in the presence of witnesses. Johnson indicated he started backing away and would not come to respondent while she was in an agitated state. Further frustrated by his refusal to comply, respondent began grabbing and choking the child and pulling his hair while swearing at him. Johnson explained how respondent was being very aggressive toward T.A. because respondent was "mainly high and drunk." That same evening, while respondent continued to drink alcohol, Johnson witnessed respondent chase T.A. with a bottle, threaten to kill him, and throw a beer bottle at him.

¶ 33 Investigator Parada's stipulated testimony contained T.A.'s statement the bottle thrown by respondent was coming toward his face before he was able to move out of the way. He said other people were present at the incident who "kept him safe." The stipulated testimony also revealed respondent threatened to kill T.A. the night of the incident and admitted drinking when the incident occurred. Additionally, she showed her unwillingness to cooperate, as she told Parada she would refuse to attend any classes DCFS offered and blamed "the system" for failing T.A. She also talked about how she was ready to sign her parental rights away—not the sort of comment one might expect from a parent concerned about the welfare of her child.

¶ 34 The court also received a police report of the incident from Deputy Brize as people's Exhibit No. 1. The report detailed how Brize responded to the incident and interviewed T.A. T.A. told Brize that respondent became very upset after he refused to come to her when called. Respondent started to curse at him, and he refused to go near her and started to run away because he was scared. He said respondent chased after him and said that she was going to kill him. The report also contained Deputy Brize's conversation with respondent. Respondent said she had been drinking all day, she never hit T.A, but she did try to discipline him. She said she never choked T.A. but did grab him by the shoulder in order to "get his attention." She admitted threatening to kill T.A. out of anger, and she admitted throwing a beer bottle out of anger, but not at T.A. After her arrest, respondent again commented about how she did not want to parent T.A.

¶ 35 The trial court was also aware of respondent's history with DCFS, the various indicated reports and previous cases of abuse and neglect which resulted in her parental rights being terminated for other children. All of this was relevant in assessing respondent's behavior and the nature of the environment in which T.A. was living. See *N.B.*, 191 Ill. 2d at 346 (an injurious environment is one where the parent fails to provide a safe and nurturing home for his or her children).

¶ 36 The nature and extent of the various behavioral problems T.A. exhibited were also relevant to the court's assessment of the effect of living with respondent while she continued to abuse substances. See *In re Arthur H*, 338 Ill. App. 3d 1027, 1036, 789 N.E.2d 890, 897 (2003) (Neglect is measured by circumstances surrounding the child and the care and condition of the child.).

¶ 37 The trial court's decision will be found to be "against the manifest weight of the evidence only if the opposite conclusion is clearly apparent or the decision is unreasonable,

arbitrary, or not based on the evidence." *In re Keyon R.*, 2017 IL App (2d) 160657, ¶ 16, 73 N.E.3d 616. The record before us reveals the trial court made an objectively reasonable decision based on the evidence presented. Considering the repeated instances of aggressive, physical violence toward a seven-year-old child with understandable behavioral and emotional issues, in each instance fueled by extensive alcohol consumption mixed with substance abuse, it was reasonable for the trial court to conclude T.A.'s environment was injurious to his welfare. Respondent told several people she no longer wanted to parent him or that she wanted to sign her parental rights away, she failed to appear for either the adjudication or dispositional hearing, failed to participate in services and told the caseworker she would not, and failed to exercise visitation with her child simply because it would be supervised. The fact that someone would be present during her visits was enough to cause respondent to give up seeing her son. Therefore, we find the court's order finding T.A. was neglected because his environment exposed him to substance abuse was not against the manifest weight of the evidence. It is clear from the record respondent had no intention of addressing her alcohol and substance abuse issues and was going to do nothing to change the nature of her parenting or lack thereof. The possibility of returning the child to that environment, to a parent who had so clearly indicated her lack of concern for his welfare, would have been a greater disservice to the child.

¶ 38 III. CONCLUSION

¶ 39 For the reasons stated, we affirm the trial court's judgment.

¶ 40 Affirmed.